

**AMENDMENT and RESPONSE**

In response to the Office Action dated May 4, 2004, kindly amend the application as follows:

**IN THE CLAIMS:**

Kindly amend the claims as shown in the listing of claims above.

**REMARKS**

A Revocation of power of attorney and a new power of attorney accompany this Response.

Applicant thanks the Examiner for the courteous First Action on the merits.

**Claim Rejection – 35 U.S.C. §102(b) (U.S. Patent No. 4,450,784 – Mellinger)**

Claims 19-23 and 26 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,450,784 (Mellinger).

Claim 19-23 and 26 recite a kite portion having a flexible base and a partially exposed substructure that flexes the base; Mellinger has a base and an exposed rod substructure but there is no teaching that the substructure flexes (as opposed to merely supporting) the base. Thus Mellinger does not have the relationship of a flexible base and substructure that flexes the base. These claims are thus patentable over Mellinger.

**Claim Rejection – 35 U.S.C. §102(b) (U.S. Patent No. 5,573,208 – Cassagnes)**

Claims 26-28 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,573,208 (Cassagnes).

Claim 26 recites a sail and a base, and that the single rod substructure is coupled to the base in flexing relation. In Cassagnes the rod (which the Action suggests is the substructure) is connected to the sail and there is no base. Claims 27 and 28 depend from claim 16 and are patentable over Cassagnes for at least the reasons advance in connection with claim 26.

**Claim Rejection – 35 U.S.C. §103(a) (U.S. Patent No. 4,450,784 – Mellinger  
in view of U.S. Patent No. 4,655,720 – Renger, et al.)**

Claims 24 and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,450,784 (Mellinger) in view of U.S. Patent No. 4,655,720 (Renger, et al.).

The above remarks with respect to Mellinger are repeated here. Renger teaches a glider with a pilot figure that serves positionally to adjust flight. Claim 24 incorporates recites the ballast portion comprises a shell and fill material within the shell and one or more coupling structures that couple the ballast to the kite portion for movement in flight, periodically or intermittently. By contrast, the figure 13 in Renger is fixed during flight. See col. 6., lines 41-54. The combination is objected to since there is no suggestion in either reference for adding a gratuitous figure to the Mellinger flying boat kite, and no motivation to do so, since the Mellinger device is not taught to need or use ballast trim, unlike the glider of Renger. Claim 25, a

method claim, is patentable over this combination of references for reasons advanced in connection with claim 24. Claim 25 recites maintaining a ballast portion... attached to the kite portion that moves relative to the kite in flight. The Renger figure is fixed in flight.

**Claim Rejection – 35 U.S.C. §103(a) (U.S. Patent No. 2,035,730 – Trevor)**

Claims 29 and 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,035,730 (Trevor).

Claims 29 and 30 are directed at a truck kite embodiment, see Fig. 7, in which the partially exposed substructure flexes the base; the rods of the substructure also support wheels. Trevor teaches an airplane kite having a wheel support structure. This structure does not flex the base of the Trevor airplane kite as there is no base in Trevor, only a frame and wings. Applicant's kite portion has a base. In terms of Section 103, Trevor does not teach or suggest a substructure that flexes a base although he does teach a wheel support system. There is no basis for suggesting the wheel support structure of Trevor be modified to flex a base which has to be added to Trevor's airplane kite. The suggestion to add a tail wheel is fanciful at best and it still does not suggest or make obvious the invention in claims 29 and 30.

**Claim Rejection – 35 U.S.C. §112, Second Paragraph**

Claims 3 and 4 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. The Examiner has indicated that these claims would be allowable if rewritten or

amended to overcome this rejection. Accordingly, Claim 3 has been amended from "said one or more said masts" to ~~one or more masts~~. Claim 3 as amended, and therefore dependent Claim 4, thus overcome the rejection under 35 U.S.C. §112.

**Objection to the Abstract of the Disclosure**

The Abstract of the Disclosure has been amended, according to the Examiner's requirement, to change "Provided is a" to ~~A~~.

**Allowable Subject Matter**

Applicant acknowledges the allowance of Claims 1, 2, 5-18 and 31-33 with thanks.

**New Claims**

Claims \_\_\_\_\_ have been added to better claim the invention. Support for these claims and for the amendments to the previous claims is found in the specification.

**Reconsideration**

Reconsideration and allowance of all claims are requested.

Respectfully submitted,

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Rec'd in the U.S. Patent & TM Office Mailroom:

- 1) Transmittal Letter
- 2) Amendment and Response to Office Action dated May 4, 2004
- 3) Power of Attorney by Inventors, Revocation of Prior Powers
- 4) Authorization to Charge Deposit Account No. 50-3046
- 5) Certificate of Facsimile Transmision

Inventor: Don TABOR  
Title: Kite With Planar Aerodynamic Surface  
Serial No.: 10/734,045  
Filed: December 11, 2003  
Art Unit: 3643  
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